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ELIMINATION OF RACIAL DISCRIMINATION: MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION

Efforts made by United Nations bodies to prevent and combat racism, racial discrimination, xenophobia and related intolerance

Report of the Secretary-General

Introduction

1. At its forty-fifth session the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1993/3 in which the Sub-Commission, reiterating that the scourges of racism and racial discrimination were continuously assuming new forms, requiring a periodic re-examination of the methods used to combat them, and concerned that in many parts of the world members of vulnerable ethnic, cultural and linguistic groups were suffering from discrimination and discriminatory treatment, recommended that arrangements should be made for the convening of a joint meeting between the Sub-Commission and the Committee on the Elimination of Racial Discrimination, with a view to the elaboration of recommendations concerning the comprehensive measures envisaged by the Commission on Human Rights in paragraph 4 of its resolution 1993/20.

2. In the same resolution the Sub-Commission requested the Secretary-General to prepare, for that meeting, a report containing a survey of efforts made by different United Nations bodies to prevent and combat racism, racial discrimination, xenophobia and related intolerance, together with proposals on how those efforts could be strengthened and better coordinated.

3. Although the Committee on the Elimination of Racial Discrimination was unable to accept the Sub-Commission's invitation, the Secretary-General submits the present report to the Sub-Commission to serve as a basis for the consideration of the topic.

Methodology

4. In order to comply with the administrative instructions concerning the control and limitation of documentation and thus avoid any repetition of information already brought before the Sub-Commission, the period covered by the report has been restricted to 1990-1993, corresponding to the last three years of the Second Decade to Combat Racism and Racial Discrimination. For earlier periods the members of the Sub-Commission may refer to the report by its Special Rapporteur, Mr. Asbjørn Eide, on the results obtained and the obstacles encountered during the first two Decades to Combat Racism and Racial Discrimination (E/CN.4/Sub.2/1985/7 and E/CN.4/Sub.2/1989/8 and Add.1).

5. This report will review only the most innovative measures, since in view of the limited amount of space available it is impossible to describe all the measures devised by United Nations bodies to prevent and combat racism and racial discrimination.

6. In recent years the influence of the United Nations in combating racism and racial discrimination has been brought to bear in three main areas:

(a) Early warning measures and urgent procedures relating to racism and racial discrimination;

(b) National mechanisms to encourage tolerance and social harmony by combating racism and racial discrimination;

(c) The drafting of model national legislation to serve as a guideline for States in the adoption and development of laws prohibiting racial discrimination.

The report will therefore deal with these three areas in turn.

I. EARLY WARNING MEASURES AND URGENT PROCEDURES

7. Because of the attitudes and practices which they generate, racism and racial discrimination are potential sources of national or even international social conflicts which can be extremely serious. It is sufficient to recall the disruptions caused by the slave trade and slavery, the holocaust and apartheid in the societies which experienced these phenomena and their impacts on international relations. More recently, the race riots in Los Angeles and

the practice known as "ethnic cleansing" in the former Yugoslavia, as well as the inter-ethnic massacres in Rwanda, have also demonstrated the highly explosive nature of situations created by racism and racial discrimination.

8. In response to the current resurgence of racism and racial discrimination and related forms of intolerance, the Committee on the Elimination of Racial Discrimination has initiated a debate and has proposed measures to improve capabilities for preventing conflicts which may stem from racial or ethnic tensions. These measures are based on those advocated by the Secretary-General in a worldwide context in his report entitled "An agenda for peace", as well as on General Assembly resolution 47/120.

9. In its report to the General Assembly (A/48/14, pp. 126-127) the Committee on the Elimination of Racial Discrimination envisaged the following measures to prevent serious violations of the Convention which it supervises:

(a) Early warning measures to address existing structural problems in order to prevent them from escalating into conflicts. These could also include confidence-building measures to identify and support structures to strengthen racial tolerance and solidify peace in order to prevent a relapse into conflict in situations where it has occurred;

(b) Urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention.

10. In the Committee's view, criteria should be developed as far as possible in order to guide the use of preventive measures, particularly in regard to triggering the mechanism and progressing towards increasingly active stages of the procedure.

(a) Possible criteria for initiating an urgent procedure could include the presence of a serious, massive or persistent pattern of racial discrimination; or that the situation is serious and there is a risk of further racial discrimination.

(b) Early warning concerns could include some of the following criteria:

(i) The lack of an adequate legislative basis for defining and criminalizing all forms of racial discrimination, as provided for in the Convention;

(ii) Inadequate implementation or enforcement mechanisms, including the lack of recourse procedures;

(iii) The presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials;

(iv) A significant pattern of racial discrimination evidenced in social and economic indicators;

(v) Significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities.

11. Possible procedural innovations and other measures which the Committee considered taking with a view to preventing human rights violations include the following:

Early warning measures

(a) The Committee could establish a follow-up mechanism to the suggestions and recommendations contained in its concluding observations, particularly in those cases where such action was deemed especially important;

(b) The Committee could offer to send to States parties one or more of its members in order to facilitate the implementation of certain international standards or to help deal with specific problems. Efforts to establish a human rights institutional infrastructure, including, for example, the creation of national bodies for the promotion and protection of the human rights of racial minorities, could significantly profit from the technical advice and assistance provided by such a visit;

(c) In its concluding observations, the Committee could include, as appropriate, specific recommendations to States parties to avail themselves of the advisory services and technical assistance programme of the Centre for Human Rights concerning, for example, possible technical assistance in the drafting of legislation or the training of officials in international human rights norms;

(d) The Committee could submit information to the Secretary-General as a contribution to the early warning mechanism to be established pursuant to General Assembly resolution 47/120, section II (1);

(e) Greater cooperation could be developed with regional arrangements for the promotion and protection of human rights. Such cooperation would enhance the Committee's information base and facilitate follow-up of the Committee's recommendations;

Urgent procedures

(f) The Committee could establish an urgent procedure to request, in accordance with article 9, paragraph 1, of the Convention, the urgent submission of a special report concerning measures taken to prevent a serious, massive or persistent pattern of racial discrimination. Such a procedure could be modelled on recent innovations adopted by other treaty bodies;

(g) The Committee could designate a special rapporteur to act as a focal point for monitoring critical situations, consult with the Chairman of the Committee to initiate the urgent action procedure and to follow-up when decisions have been taken;

(h) The Committee could address an expression of its concern, along with recommendations for action, to:

(i) The State party concerned;

(ii) The Special Rapporteur established under Commission on Human Rights resolution 1993/20;

(iii) The Secretary-General for the attention of the early warning mechanism to be established pursuant to General Assembly resolution 47/120, section II (I);

(iv) All other human rights bodies dealing with the question concerned;

(v) The Secretary-General, along with a recommendation that the matter be brought to the attention of the Security Council.

Other measures which could be taken within the framework of prevention of racial discrimination

12. The Committee envisaged arranging short informal meetings at the regional and national levels, with the support of United Nations agencies and organs. The purpose of these meetings would be to promote greater awareness of international human rights standards and facilitate a deeper understanding of the work of the treaty body system. Direct contact with officials, human rights organizations and agencies at the regional or national levels would more effectively sensitize the Committee members themselves regarding the actual human rights conditions prevailing in the regions. This could be accomplished in the context of informal meetings not requiring full conference services but organized through the Centre for Human Rights and supported, in part, by appropriate United Nations agencies and organs. Additionally, seminars could be organized as contained in the recommended programme of action for a third decade to combat racism and racial discrimination (see Commission on Human Rights resolution 1993/11, annex). In particular, such seminars could focus on: the relationship between violence and racism; the involvement of youth in contemporary forms of racism; measures to eliminate racist propaganda; and problems relating to refugee flows arising from ethnic conflicts and political change.

II. NATIONAL MECHANISMS

13. In the opinion of Mr. Asbjørn Eide, the Sub-Commission's Special Rapporteur on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, it is of crucial importance "to have channels available to deal with grievances as soon as they emerge, and to take remedial actions before members of a group feel that their legitimate concerns are neglected" (see E/CN.4/Sub.2/1993/34, para. 289). In situations of ethnic or racial tension, bodies of this kind can act as a forum for mediation and negotiation.

14. The United Nations was quick to realize the importance of such bodies; their establishment, under the generic name of national institutions for the promotion and protection of human rights, was encouraged by the Economic and Social Council as early as 1946, and later by the Commission on Human Rights. Although the existence of the American Civil Rights Commission goes back to 1947, bodies of this kind really began to develop in the 1980s. The Centre for Human Rights has kept up with their progress and is active in helping to strengthen them. A manual and a plan of action are being prepared for this purpose.

15. Without going into details concerning the authority and widely varying operations of these bodies, it is true to say that they deal mainly with protecting citizens, and sometimes foreigners, against discrimination, as well as with the protection of civil and political, economic, social and cultural rights, both individual and collective.

16. Although these bodies are not a substitute for the judiciary, they provide victims of racism and racial discrimination with recourse procedures and with the necessary legal aid to enforce their rights. They thus complement the safeguards inherent in any comprehensive and effective legal structure, their role being mainly evident in transforming the mentality of the groups concerned through action to promote the value of cultural diversity and demolish racist theories.

17. In 1991, at the first Workshop of National Institutions for the Promotion and Protection of Human Rights, held in Paris, the Centre contributed to the formulation of Principles relating to the status of national institutions, which were endorsed by the General Assembly in resolution 48/134. These Principles recognize, inter alia, that the national institutions should combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education.

18. The existence of such bodies does not, of course, relieve States of the responsibility for adopting suitable legislation to suppress racist acts and discriminatory practices. In point of fact, the Principles relating to the status of national institutions indicate that these institutions shall be empowered to examine, give opinions and make recommendations on legislation and proposed legislation in order to ensure that it conforms to the fundamental principles of human rights. Moreover, national institutions shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.

19. National institutions cooperate increasingly with the United Nations bodies responsible for human rights. In this connection, mention should be made of the recent contributions of the Australian and French Commissions to the preparation of the periodic reports submitted by their respective countries to the Committee on the Elimination of Racial Discrimination. The report of the Australian Human Rights and Equal Opportunity Commission on racist violence in Australia, for example, was annexed to that country's eighth periodic report (CERD/C/194/Add.2). The 1992 report of the French National Advisory Commission on Human Rights on action to combat racism

and xenophobia was likewise annexed to the eleventh periodic report of France (CERD/C/225/Add.2). On the strength of this experience, the Committee, in its recommendation XVII (42) on the establishment of national institutions to facilitate the implementation of the Covenant, made a point of encouraging States parties to establish national commissions or other appropriate bodies to serve, inter alia, the following purposes:

(a) To promote respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) To review government policy towards protection against racial discrimination;

(c) To monitor legislative compliance with the provisions of the Convention;

(d) To educate the public about the obligations of States parties under the Convention;

(e) To assist the Government in the preparation of reports submitted to the Committee on the Elimination of Racial Discrimination.

20. The Committee also recommended that, where such commissions have been established, they should be associated with the preparation of reports and possibly included in government delegations in order to intensify the dialogue between the Committee and the State party concerned (A/48/18, p. 117).

21. Mention should also be made of the increasingly active part played by national institutions in the work of the Commission on Human Rights. With the Committee for Coordination which they have set up and with the observer status they seek in the Commission on Human Rights, the national institutions are on the way to becoming effective partners of the United Nations in the promotion and protection of human rights.

III. MODEL NATIONAL LEGISLATION

22. At the request of the General Assembly and in close collaboration with the Committee on the Elimination of Racial Discrimination, the Centre for Human Rights prepared a model law whose provisions could serve as a guide for Governments which envisaged enacting legislation to prevent and repress racism and racial discrimination or improving the legal instruments already at their disposal.*

23. The model law proposes measures to prevent or prohibit acts of racial discrimination committed either by private individuals or by persons invested with public authority. It defines various offences in this respect and

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* The model national legislation, the text of which is in course of publication, has appeared in document A/48/558.

recommends appropriate penalties. It emerges from the text that, to be effective, a law against racism and racial discrimination must repress the following offences:

(a) Racial discrimination committed in exercise of the freedom of opinion and expression;

(b) Acts of violence and incitement to racial violence;

(c) Racist organizations and activities;

(d) Offences committed by public officials or other servants of the State;

(e) Offences committed in employment, education, housing and the provision of facilities and services.

IV. CONCLUSIONS AND RECOMMENDATIONS

24. As indicated above, the present report seeks to highlight the main aspects of recent United Nations policy in regard to combating racism and racial discrimination. On the basis of the information provided, the Sub-Commission might envisage support for the early warning and urgent procedure mechanism as recommended by the Committee on the Elimination of Racial Discrimination. The Sub-Commission might propose that this mechanism should consist of a member of the Sub-Commission, the Special Rapporteur on contemporary forms of racism and a member of the Committee on the Elimination of Racial Discrimination. Also, more detailed consideration should be given to the way in which the mechanism would be triggered. The suggestion might be made that the High Commissioner for Human Rights should activate the mechanism in case of need.

25. If the Sub-Commission declined to approve the tripartite composition of the early warning mechanism, it would need to consider the possibility of creating such a structure within itself, but taking care that the structure did not duplicate the one envisaged by the Committee on the Elimination of Racial Discrimination.

26. The Sub-Commission should also consider strengthening its relations with the national institutions for the promotion and protection of human rights. Hitherto these bodies have not attended its sessions, even though, at the national level, they undertake functions in areas for which the Sub-Commission is responsible at the international level. The Sub-Commission might recommend to the Committee for Coordination on National Institutions that all the national institutions should be invited to participate in and contribute to the Sub-Commission's sessions.

27. With regard to the model national legislation for the guidance of Governments in the enactment and further development of legislation prohibiting racial discrimination, the Sub-Commission should invite the Governments concerned to refer to the model legislation where necessary.